

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	File No. EB-02-TC-014
)	
Comcast Cablevision of the South)	CUID No. KY0640 (Hardin County)
)	
Petition for Reconsideration)	

ORDER

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order, we consider a petition for reconsideration ("Petition") of Cable Services Bureau Order, DA 96-1843 ("Prior Order"),² filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").³ Operator also included a refund plan with its petition. The Prior Order resolved a complaint filed against Operator's February 1, 1996 rate increase for its cable programming services tier ("CPST") in the community referenced above. In this Order we grant Operator's Petition in part and modify the Prior Order.

2. Under the provisions of the Communications Act⁴ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁵ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁶ and the Commission's rules implementing the legislation ("Interim Rules"),⁷ required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁸ If the

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *See In The Matter of Telescripps Cable Company*, DA 96-1843, 11 FCC Rcd 14518 (CSB 1996).

³ The term "Operator" includes Operator's successors and predecessors in interest.

⁴ 47 U.S.C. §543(c) (1996).

⁵ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹⁰ Operators may file an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.¹¹ Operators may justify their rates on an annual basis using an FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹² Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹³

4. In the Prior Order, the Cable Services Bureau reduced Operator's maximum permitted rate ("MPR") because Operator made a clerical error and claimed external costs incurred in January 1996 in its FCC Form 1210 covering the period April 1, 1995 through December 31, 1995. Because the Cable Services Bureau did not have the information necessary to determine what portion of the external costs increase was attributable to the period under review, it denied all external costs increases for that period. In its Petition, Operator provides a breakdown of its external costs increase and argues that it should be entitled to the external costs increase attributable to the period under review. Operator made another clerical error when it filed its FCC Form 1200 and FCC Form 1210s to justify its February 1, 1996 CPST rate increase. It included all of its inflation factor adjustments in the second FCC Form 1210. The Cable Services Bureau denied part of the adjustment as being untimely taken. Operator argues that it could have included part of the adjustment in its first FCC Form 1210, which would have been acceptable because both FCC Form 1210s were generated to support the February 1, 1996 CPST rate increase, Operator's CPST was not regulated prior to February 1996 and Operator's CPST rate in effect prior to the February 1, 1996 increase could have included the inflation adjustment in issue. We are persuaded that the external costs adjustment and the inflation factor adjustment were clerical errors and not substantive errors and we find Operator's argument to be compelling on both issues. Therefore, we grant Operator's Petition in part to that extent.

5. Upon review of Operator's FCC Form 1200 and subsequent filings, taking into account the additional inflation and external costs adjustments, we calculate a revised MPR of \$12.40 for the period February 1, 1996 through March 31, 1996. We will allow Operator to claim the additional external costs increase beginning April 1, 1996 and we find Operator's calculated MPR of \$12.99 to be reasonable, effective April 1, 1996. Because Operator's actual CPST rate of \$13.09 exceeds its revised MPRs, we find Operator's actual CPST rate of \$13.09 to be unreasonable, effective February 1, 1996 through November 7, 1996 (the release date of the Prior Order). However, the Prior Order noted that Operator intended to reduce its CPST rate to \$12.99 effective November 1, 1996, and to refund to CPST subscribers \$0.10 per month plus interest for the period February 1, 1996 through October 31, 1996. To

⁸ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

⁹ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹⁰ See Section 76.922 of the Commission's rules, 47 C.F.R. §76.922.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

the extent Operator reduced its rates to \$12.99 or refunded \$0.10 per month per subscriber or both, Operator may include this calculation in its refund plan, but must provide documentation of its actual rate charged, and certify that it has provided the refunds. We modify the Prior Order accordingly.

6. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is GRANTED IN PART TO THE EXTENT INDICATED HEREIN.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that *In The Matter of Telescripps Cable Company*, DA 96-1843, 11 FCC Rcd 14518 (CSB 1996) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the CPST rate of \$13.09, charged by Operator in the community referenced above, effective February 1, 1996 through November 7, 1996 IS UNREASONABLE.

9. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.40 per month (plus franchise fees), plus interest to the date of the refund, for the period February 1, 1996 through March 31, 1996.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community referenced above that portion of the amount paid in excess of the maximum permitted CPST rate of \$12.99 per month (plus franchise fees), plus interest to the date of the refund, for the period April 1, 1996 through November 7, 1996.

11. IT IS FURTHER ORDERED that Operator shall promptly determine the overcharges to CPST subscribers for the stated periods, and shall within 30 days of the release of this Order, file a report with the Chief, Enforcement Bureau, stating the cumulative refund amount so determined (including franchise fees and interest), describing the calculation thereof, and describing its plan to implement the refund within 60 days of Commission approval of the plan.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau